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Attorneys for the United States

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEAN TRINH,

Defendant.

No.

4-13-70642

NOTICE OF PROCEEDINGS ON OUT-
OF-DISTRICT CRIMINAL CHARGES
PURSUANT TO RULES OF CRIMINAL
PROCEDURE

Please take notice pursuant to Rules 5(c)(2) and (3) of the Federal Rules of Criminal Procedure that on June 7, 2013, the above-named Defendant was arrested in the Northern District of California with a pending arrest warrant (attached) issued in case number 12-10016-CR-MARTINEZ from the Southern District of Florida issued upon an Indictment (attached). Defendant is charged with: one count of conspiracy to transport, sell, receive, acquire, and purchase wildlife in violation of the laws and regulations of the state of Florida, in violation of 18 U.S.C. § 371.

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FILED
JUN - 7 2013
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND


MAG

1 The maximum penalties for this offense are: up to 5 years in prison; a fine of up to
2 \$250,000; up to 3 years of supervised release; and a mandatory special assessment of \$100.

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4 Respectfully Submitted,

5 MELINDA HAAG
6 United States Attorney

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8 Dated: June 7, 2013

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10 CHRISTINA McCALL
11 Assistant United States Attorney
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.

12-10016 CR-MARTINEZ

16 U.S.C. § 3372(a)(2)(A)

16 U.S.C. § 3373(d)(1)(B)

18 U.S.C. § 371

18 U.S.C. § 2

McALILEY

UNITED STATES OF AMERICA

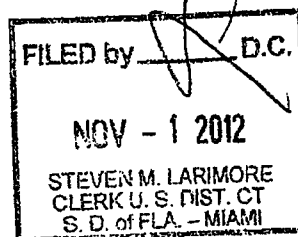
v.

ALLAN WAGNER

and

DEAN TRINH,

Defendants. /



INDICTMENT

The Grand Jury charges that:

BACKGROUND

At all times material to this Indictment:

1. The Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) was empowered by federal law to issue the federal annual vessel permit required in order to fish commercially in federal waters for Atlantic sharks and also required to sell sharks harvested in federal waters.

2. Florida Administrative Code, Section 68B-44.005, "Commercial Harvest of Sharks: Federal Permit Required" provides in relevant part:

"(1) No person shall harvest sharks in or from the waters of the state for commercial purposes or sell any shark harvested from such waters unless such person is in possession of a valid federal annual vessel permit for sharks issued pursuant to 50 C.F.R. §635.4 or written authorization of such harvest or sale from the Regional Director of the National Marine Fisheries Service pursuant to 50 C.F.R. §635.32.

(2) A harvester required to hold the federal annual vessel permit for sharks pursuant to subsection (1) may only sell to a holder of a valid Atlantic shark dealer permit pursuant to 50 C.F.R. §635.4.”

3. The federal Lacey Act, among other things, makes it unlawful for any person to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce, any fish or wildlife, taken, possessed, transported, or sold in violation of any law or regulation of any State. 16 U.S.C. §3372(a)(2)(A).

4. Defendant **ALLAN WAGNER** was a resident of Monroe County, Florida and held a Florida Saltwater Products License. He did not possess a valid federal annual vessel permit for sharks. He was the registered owner of a 1981 40.1' Torres, commercial fishing vessel “ALWAYS LATE,” H.I.N. No. TBP000390381, U.S. Coast Guard Documentation No. 641455

5. Defendant **DEAN TRINH** was a resident of Milpitas, California, D/B/A AQUATOP USA, LLC, utilizing a business address of 1851 McCarthy Boulevard, Milpitas, California 95035, which, inter alia, advertised the sale of nurse sharks on eBay and Craig’s List.

COUNT 1
Conspiracy
(18 U.S.C. § 371)

1. Paragraphs 1 through 5 of the Background section of this Indictment are incorporated herein by reference as if set forth in their entirety.

2. Beginning on an unknown date, but at least as early as on or about August 2, 2009 and continuing through on or about August 22, 2012, at Monroe County, in the Southern District of Florida and elsewhere, the defendants,

ALLAN WAGNER
and
DEAN TRINH,

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly combine, conspire, confederate, and agree with each other and with others known and unknown to the Grand Jury, to commit certain offenses against the United States, that is: transport, sell, receive, acquire, and purchase any fish and wildlife, that is juvenile nurse sharks (*Ginglymosthoma cirratum*), with a fair market value in excess of \$350.00, knowing that said sharks were taken, possessed, transported, sold, and intended to be sold in violation of the laws and regulations of the State of Florida, in violation of Title 16, United States Code, Sections 3372(a)(2)(A), and 3373(d)(1) and (2).

Purpose of the Conspiracy

3. The purpose of the conspiracy was for the defendants and their co-conspirators to take, harvest, capture, transport, and sell quantities of juvenile nurse sharks from state waters, for commercial sale and distribution in interstate commerce to their financial gain.

Manner and Means of the Conspiracy

The manner and means by which the defendants sought to accomplish the object and purpose of the conspiracy included, among others, the following:

4. The defendants, and other known and unknown co-conspirators, extracted nurse shark pups from lobster traps placed in state waters.

5. Thereafter, the defendants, and other known and unknown co-conspirators, negotiated the sale and transfer of the juvenile nurse shark pups by internet email transmissions.

6. The defendants and their co-conspirators arranged for the shipment of the juvenile nurse sharks to California by commercial air cargo.

Overt Acts

In furtherance of the conspiracy and to effect the object and purpose thereof, there was committed and caused to be committed by at least one of the co-conspirators herein, within the Southern District of Florida and elsewhere, at least one of the following overt acts, among others:

1. On or about August 15, 2011, **ALLAN WAGNER** placed a call to an individual known to the Grand Jury ("Individual 1") to discuss plans for the harvest of juvenile nurse sharks and the need for a containment pen in which to retain harvested sharks.

2. On or about August 22, 2011, at Marathon, Florida, **ALLAN WAGNER** placed a call to Individual 1, advising that **WAGNER** was holding fifteen sharks for sale, and specifying details of the sharks' appearance and price.

3. On or about August 23, 2011, **DEAN TRINH** conducted an email exchange with Individual 1 at a business located in Monroe County, during which **TRINH** sought to purchase live sharks and advised he wanted to buy them despite being warned that the business could acquire undersized nurse shark pups for sale, but lacked the necessary permits.

4. On or about August 25, 2011, **DEAN TRINH** conducted an email exchange with Individual 1 at a business located in Monroe County, during which **TRINH** confirmed his order to purchase live sharks and provided shipping and payment details.

5. On or about August 25, 2011, at Marathon, Florida, **ALLAN WAGNER** sold approximately 20 live nurse shark pups for a total of \$250.00, to Individual 1, which sharks were intended for resale in interstate commerce.

6. On or about August 25, 2011, **DEAN TRINH** conducted an email exchange with Individual 1 at a business located in Monroe County, during which **TRINH** confirmed the purchase and receipt, via Southwest Airlines, of 10 live nurse shark pups for approximately \$355.00.

7. On or about August 27, 2011, at the direction of **DEAN TRINH**, payment was made to Individual 1 for the 10 nurse shark pups from a PayPal account in the name of a family member of **TRINH**.

8. On or about September 1, 2011, **DEAN TRINH** remitted through a PayPal transaction approximately \$342.40 to Individual 1, at a Monroe County business, in payment for a shipment of 10 live nurse shark pups which originated in Monroe County, and were shipped to **TRINH** in Milpitas, CA on a Southwest Airlines cargo plane from Fort Lauderdale International Airport.

9. On or about August 16, 2012, at Monroe County, **ALLAN WAGNER**, during a telephone conversation, advised Individual 1 that nurse shark pups were available for pick-up and sale, in a pen at the marina where **WAGNER** moored his commercial fishing vessel.

All in violation of Title 18, United States Code, Section 371.

COUNTS 2 - 6
Sale or Purchase
(16 U.S.C. §§ 3372(a)(2)(A), 3373(d)(1)(B))

1. Paragraphs 1 through 5 of the Background section of this Indictment are hereby incorporated by reference as if set forth in their entirety.

2. On or about the dates listed below with respect to each Count, in the Southern District of Florida, the defendant,

ALLAN WAGNER,

did knowingly engage in conduct that involved the sale and purchase of, and intent to sell and purchase, fish with a market value in excess of \$350.00, that is, nurse sharks (*Ginglymosthoma cirratum*) in the number specified with respect to each Count, and did knowingly sell, receive, and acquire said fish in interstate commerce, knowing that said fish were taken, possessed, transported, and sold in violation of and in a manner unlawful under the laws and regulations of the State of Florida, specifically, Florida Administrative Code, Sections 68B-44.005:

Count	Approximate Date	Number of Sharks
2	08-02-2009	6
3	08-15-2009	11
4	08-20-2009	17
5	10-10-2009	20
6	10-13-2009	20

In violation of Title 16, United States Code, Sections 3372(a)(2)(A) and 3373(d)(1)(B), and Title 18, United States Code, Section 2.

CRIMINAL FORFEITURE

Upon conviction of the violations alleged in Counts 1 through 6 of this Indictment, the defendant **ALLAN WAGNER** shall forfeit to the United States all vessels, vehicles, and other equipment used to aid in the importing, exporting, transporting, selling, receiving, acquiring, or purchasing of fish or wildlife, specifically including the following:

a. One 1981 40.1' Torres, commercial fishing vessel "ALWAYS LATE," H.I.N. No. TBP000390381, U.S. Coast Guard Documentation No. 641455, including all equipment, accessories, engines, tackle, and appurtenances.

Pursuant to Title 28, United States Code, Section 2461, Title 16, United States Code, Section 3374(a)(2), and the procedures outlined at Title 21, United States Code, Section 853, if the property described above as being subject to forfeiture, as a result of any acts or omissions of the defendant **ALLAN WAGNER**,

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

All pursuant to Title 28, United States Code, Section 2461, Title 16, United States Code, Section 3374(a)(2), and Title 21, United States Code, Section 853.

A TRUE BILL

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FOREPERSON


WIFREDO A. FERRER
UNITED STATES ATTORNEY


Thomas A. Watts-FitzGerald
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO. _____

vs.

CERTIFICATE OF TRIAL ATTORNEY*

ALLAN WAGNER
and
DEAN TRINH,

Defendants.

Superseding Case Information:

Court Division: (Select One)

_____ Miami	X	_____ Key West	
_____ FTL		_____ WPB	_____ FTP

 New Defendant(s) _____
 Number of New Defendants _____
 Total number of counts _____

Yes _____ No _____

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

 3. Interpreter: (Yes or No) No
 List language and/or dialect _____

 4. This case will take 3 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)

(Check only one)

I	0 to 5 days	<u>X</u>	Petty	_____
II	6 to 10 days	_____	Minor	_____
III	11 to 20 days	_____	Misdem.	_____
IV	21 to 60 days	_____	Felony	<u>X</u>
V	61 days and over	_____		

 6. Has this case been previously filed in this District Court? (Yes or No) No

 If yes:
 Judge: _____

Case No. _____

(Attach copy of dispositive order)

Has a complaint been filed in this matter?

(Yes or No) No

If yes:

Magistrate Case No. _____

Related Miscellaneous numbers: _____

Defendant(s) in federal custody as of _____

Defendant(s) in state custody as of _____

Rule 20 from the _____

District of _____

Is this a potential death penalty case? (Yes or No) No
 7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? _____ Yes X No

 8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? _____ Yes X No


 THOMAS WATTS-FITZGERALD
 ASSISTANT UNITED STATES ATTORNEY
 Florida Bar No./Court No. 0273538

*Penalty Sheet(s) attached

REV 4/8/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: ALLAN WAGNER

Case No: _____

Count #: 1

Conspiracy

18 U.S.C. § 371

* Max. Penalty: Five (5) years' imprisonment

Counts #: 2 - 6

Illegal purchase and sale of sharks

16 U.S.C. §§ 3371(a)(2)(A), 3373(d)(1)(B)

*Max. Penalty: Five (5) years' imprisonment

Count #:

*Max. Penalty:

Count #:

*Max. Penalty:

* Refers only to possible fine, does not include possible restitution, special assessments, parole terms, or forfeitures that may be applicable.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: DEAN TRINH

Case No: _____

Count #: 1

Conspiracy

18 U.S.C. § 371

* Max. Penalty: Five (5) years' imprisonment

Counts #: 2 - 6

Illegal purchase and sale of sharks

16 U.S.C. §§ 3371(a)(2)(A), 3373(d)(1)(B)

*Max. Penalty: Five (5) years' imprisonment

Count #:

*Max. Penalty:

Count #:

*Max. Penalty:

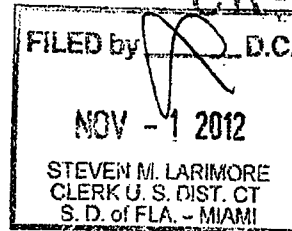
* Refers only to possible fine, does not include possible restitution, special assessments, parole terms, or forfeitures that may be applicable.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

12-10016

CR-MARTINEZ



/ McALILEY

IN RE SEALED INDICTMENT

SEALED ORDER

The United States of America, having applied to this Court for an Order sealing the indictment, arrest warrants, and this Order and the Court finding good cause:

IT IS HEREBY ORDERED that the indictment, arrest warrants, and this Order shall be filed under seal until the arrest of the first defendant in this matter or until further order of this Court, however, the United States Attorney's Office and any other relevant law enforcement agency may obtain copies of any indictment, arrest warrants, or other sealed document for purposes of arrest, extradition, or any other necessary cause.

DONE AND ORDERED in chambers at Miami, Florida, this 1st day of November, 2012.


ANDREA M. SIMONTON
UNITED STATES MAGISTRATE JUDGE

cc: T. Watts-FitzGerald, AUSA